



**U.S. Department of Justice**  
Civil Division  
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February 19, 2021

By ECF

Hon. George B. Daniels  
United States District Court  
Southern District of New York  
500 Pearl Street, Room 1310  
New York, NY 10007

Re: Unopposed request for a stay of proceedings in *Make the Road New York v. Blinken*, No. 19-cv-11633

Dear Judge Daniels:

I represent the defendants in the above-captioned case. The defendants previously advised the Court that, on February 2, 2021, the President issued an Executive Order calling for the Secretary of State to review agency actions related to implementation of the public charge ground of inadmissibility, 8 U.S.C. § 1182(a)(4)(A). Exec. Order No. 14,012, 86 Fed. Reg. 8277 (Feb. 2, 2021), <https://www.govinfo.gov/app/details/FR-2021-02-05/2021-02563>. In light of that Executive Order and the review the Department of State is conducting under that Order, the defendants request that the Court enter a stay of proceedings in this action for 90 days. The defendants conferred with the plaintiffs, and the plaintiffs indicated that they do not object to the request for a stay, as detailed further below.<sup>1</sup>

The plaintiffs in this case are challenging three Government actions that pertain to the entry of persons into the United States: (1) a January 2018 revision to portions of the Department of State Foreign Affairs Manual, 9 FAM § 302.8-2, pertaining to evaluation of whether a visa applicant is likely to become a “public charge” under the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(4); (2) the President’s October 2019 Proclamation concerning Suspension of Entry of Immigrants Who Will Financially Burden the United States Healthcare System, in Order to Protect the Availability of Healthcare Benefits for Americans, Proclamation No. 9945, 84 Fed. Reg. 53,991 (Oct. 4, 2019); and (3) the October 2019 interim final rule published by the Department of State amending its regulation governing the application of the “public charge”

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<sup>1</sup> The defendants’ February 3, 2021, letter proposed that the parties file a joint status report by February 19, 2021. The defendants are submitting this letter in lieu of a joint status report.

provision, 22 C.F.R. § 40.41, Visas: Ineligibility Based on Public Charge Grounds, 84 Fed. Reg. 54,996 (Oct. 11, 2019).

None of these actions is currently being applied. The January 2018 guidance was superseded by new guidance reflecting the October 2019 rule and is no longer in use. This Court entered a preliminary injunction in July 2020 barring enforcement of all three challenged actions. Mem. Decision and Order 52, ECF No. 88.

The defendants have filed an appeal from the July 2020 preliminary injunction, but the Second Circuit has entered an order holding the proceedings in abeyance, including consideration of the defendants' motion for a stay pending appeal. *See Make the Road N.Y. v. Pompeo*, No. 20-3214 (2d Cir. Feb. 10, 2021), ECF No. 3033568.

In light of the Executive Order and the reviews directed by the Executive Order, the defendants request that the Court stay proceedings in this action for 90 days. The defendants conferred with the plaintiffs, and the plaintiffs indicated that they do not oppose the request in light of the Second Circuit's order and this Court's preliminary injunction remaining in effect, though they reserve the right to seek to advance the case if circumstances change. The defendants agree that a stay should not preclude either side from making a request to lift the stay if circumstances change.

Accordingly, the defendants respectfully request that the Court stay proceedings in this action for 90 days.

Sincerely,

/s/

James C. Luh  
Senior Trial Counsel  
United States Department of Justice

Cc: All counsel of record via ECF